United States Senate
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS
WASHINGTON, DC 20510–6075

February 15, 2011

The Honorable Timothy Geithner
Secretary
The Department of Treasury
1500 Pennsylvania Ave., NW
Washington, DC 20220

The Honorable Ben Bernanke
Chairman
The Federal Reserve System
20th Street and Constitution Ave., NW
Washington, DC 20551

The Honorable Gary Gensler
Chairman
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

The Honorable Mary Schapiro
Chairman
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

The Honorable Sheila Bair
Chairman
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

John Walsh
Acting Comptroller
Office of the Comptroller of the Currency
250 E Street, SW, Room 9048
Washington, DC 20219

Dear Secretary Geithner, Chairmen Bernanke, Schapiro, Gensler, Bair, and Acting Comproller Walsh:

We write to ask the regulatory agencies charged with implementing the Dodd-Frank Act to employ fundamental principles of good regulation in fulfilling their statutory mandate and not sacrifice quality and fairness in exchange for speed. We are concerned that regulators are not allowing adequate time for meaningful public comment on their proposed rules. We also believe that regulators are not conducting rigorous analyses of the costs and benefits of their rules and the effects those rules could have on the economy. The potential harm to our already weak economy and the public from ill-conceived rules cannot be underestimated.

The unprecedented scope and pace of agency rulemakings under the Dodd-Frank Act make it more important than ever that agencies engage in deliberative and rational rulemaking. The rules adopted under the Dodd-Frank Act will have a long-term effect on economic growth; they will affect how consumers and businesses obtain credit, allocate capital, and manage risk. Given the volume, complexity, and potential consequences of the Dodd-Frank rulemaking, regulators particularly need the input of public commenters, who can help to assess effects of rule proposals on job creation and economic growth, provide less costly alternatives, and provide useful empirical data for the agency to use in its analyses.

A review of Dodd-Frank rulemaking by the Committee on Capital Markets found that public comment periods are a little over forty days, which is substantially shorter than the sixty day minimum comment period generally required by the Office of Management and Budget.[1] Despite the abbreviated comment periods, some commenters have done their own analysis and identified flaws in agency cost-benefit analyses. For example, a group of energy companies, in response to a proposed rulemaking by the Commodity Futures Trading Commission ("CFTC"), estimated that the personnel costs for swap dealers and major swap participants in connection with implementing a comprehensive risk management plan would be at least "63 times greater than the Commission's estimate."[2] If afforded additional time, more unanticipated consequences of proposed rules could be detected.

Commissioners at both the CFTC and the Securities and Exchange Commission ("SEC") have raised concerns about economic analysis at their agencies. CFTC Commissioners Michael Dunn, Scott O'Malia, and Jill Sommers, for example, have commented on the lack of economic data on the CFTC proposed rule on commodity speculative position limits.[3] Similarly, SEC Commissioners Kathleen Casey and Troy Paredes issued a statement calling for more rigorous analysis on the SEC staff study on Investment Advisers and Broker-Dealers required by Dodd-Frank.[4]

Please respond to the following questions to help us understand how your agency is working to better integrate sound regulatory principles into your Dodd-Frank rulemakings and studies:

1. Will your agency provide at least 60 days for public comment on all proposed rules and studies required by the Dodd-Frank Act?

2. Please explain the steps that your agency is taking to ensure that the rules you adopt under the Dodd-Frank Act are the least burdensome way to achieve the statutory mandate. In so doing, provide documentation about how those steps satisfy your obligations under the Administrative Procedure Act and other applicable statutes to conduct cost-benefit and economic impact analyses.

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[1] *See* Letter from R. Glenn Hubbard, John L. Thornton, and Hal S. Scott to the Chairmen and Ranking Members of the United States Senate Committee on Banking, Housing, and Urban Affairs and the United States House of Representatives Financial Services Committee (Dec. 15, 2010) (available at: http://www.capmktsreg.org/pdfs/2010.12.15_Rulemaking_Timeline_Letter.pdf), at 3. The letter points out that forty day comment periods are a slight improvement over the just longer than thirty day average in the three months following the enactment of Dodd-Frank. *Id.* at 3.

[2] Letter from Working Group of Commercial Energy Firms to David A. Stawick, Secretary, Commodity Futures Trading Commission, Dec. 15, 2010 (available at: http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=26748&SearchText=), at 3.

[3] *See, e.g.*, Comments of Commissioner Michael Dunn at Public Meeting on Proposed Rules under the Dodd-Frank Act (Jan. 13, 2011) (available at: http://www.cftc.gov/PressRoom/SpeechesTestimony/dunnstatement011311.html) ("To date, CFTC staff has been unable to find any reliable economic analysis to support either the contention that excessive speculation is affecting the markets we regulate, or that position limits will prevent excessive speculation.")

[4] The two commissioners stated: "Indeed, the Study does not identify whether retail investors are systematically being harmed or disadvantaged under one regulatory regime as compared to the other and, therefore, the Study lacks a basis to reasonably conclude that a uniform standard or harmonization would enhance investor protection." Statement by SEC Commissioners: Statement Regarding Study on Investment Advisers and Broker-Dealers, Jan. 21, 2011 (available at: http://www.sec.gov/news/speech/2011/spch012211klctap.htm).

3. Please explain the steps that your agency is taking to ensure that all empirical data and economic analyses submitted by commenters are thoroughly considered before a final rule is adopted.

4. In many instances, the Dodd-Frank Act requires agencies to coordinate rulemaking and promulgate joint rules. What steps are you taking to ensure that your agency is acting in coordination with other agencies charged with adopting related rules? How is your agency coordinating with other agencies that regulate entities over which your agency has been given regulatory jurisdiction by the Dodd-Frank Act?

5. Given the importance of rigorous cost-benefit and economic impact analyses and the need for due consideration of public comments, would additional time for adoption of the Dodd-Frank Act rules improve your rulemaking process and the substance of your final rules?

Thank you for your attention and we look forward to your response at your earliest convenience.

Mike Crapo

Richard Shelby

Jerry Moran

Jim DeMint